

**MARRIAGE CODE REVISIONS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen G. Handy**

Senate Sponsor: Todd Weiler

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to marriage.

**Highlighted Provisions:**

This bill:

- ▶ addresses incestuous marriages;
- ▶ clarifies when marriages are prohibited and void;
- ▶ replaces certain references to gender specific terms with gender neutral terms;
- ▶ establishes who may solemnize a marriage;
- ▶ addresses the content of a marriage license;
- ▶ provides for an affidavit before the clerk; and
- ▶ makes technical and conforming amendments.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**30-1-1**, as last amended by Laws of Utah 1996, Chapter 83

**30-1-2**, as last amended by Laws of Utah 1999, Chapter 15

**30-1-3**, Utah Code Annotated 1953

**30-1-6**, as last amended by Laws of Utah 2015, Chapter 46

**30-1-8**, as last amended by Laws of Utah 2004, Chapter 261

30 **30-1-9**, as last amended by Laws of Utah 2018, Chapter 415

31 **30-1-10**, as last amended by Laws of Utah 2011, Chapter 297

32 **30-1-12**, as last amended by Laws of Utah 1988, Chapter 154

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34 *Be it enacted by the Legislature of the state of Utah:*

35 Section 1. Section **30-1-1** is amended to read:

36 **30-1-1. Incestuous marriages void.**

37 (1) The following marriages are incestuous and void from the beginning, whether the  
38 relationship is legitimate or illegitimate:

39 (a) marriages between parents and children;

40 (b) marriages between ancestors and descendants of every degree;

41 (c) marriages between [~~brothers and sisters~~] siblings of the half as well as the whole  
42 blood;

43 (d) marriages between:

44 (i) uncles and nieces or nephews; or

45 (ii) aunts and nieces or nephews;

46 (e) marriages between first cousins, except as provided in Subsection (2); or

47 (f) marriages between any [~~persons~~] individuals related to each other within and not  
48 including the fifth degree of consanguinity computed according to the rules of the civil law,  
49 except as provided in Subsection (2).

50 (2) First cousins may marry under the following circumstances:

51 (a) both parties are 65 years of age or older; or

52 (b) if both parties are 55 years of age or older, upon a finding by the district court,  
53 located in the district in which either party resides, that either party is unable to reproduce.

54 Section 2. Section **30-1-2** is amended to read:

55 **30-1-2. Marriages prohibited and void.**

56 The following marriages are prohibited and declared void:

57 (1) when there is a [~~husband or wife~~] spouse living, from whom the person marrying

has not been divorced;

(2) when ~~[the male or female]~~ an applicant is under 18 years of age unless consent is obtained as provided in Section 30-1-9;

(3) ~~[when the male or female is under 14 years of age or, beginning May 3, 1999, when the male or female]~~ when an applicant is under 16 years of age at the time the parties attempt to enter into the marriage~~[-however]~~, except that exceptions may be made for a person 15 years of age, under conditions set in accordance with Section 30-1-9; and

(4) between a divorced ~~[person]~~ individual and any ~~[person]~~ individual other than the one from whom the divorce was secured until the divorce decree becomes absolute, and, if an appeal is taken, until after the affirmance of the decree~~[-and]~~.

~~[(5) between persons of the same sex.]~~

Section 3. Section 30-1-3 is amended to read:

**30-1-3. Marriage in belief of death or divorce of former spouse -- Issue legitimate.**

When a marriage is contracted in good faith and in the belief of the parties that a former ~~[husband or wife]~~ spouse, then living and not legally divorced, is dead or legally divorced, the issue of such marriage born or begotten before notice of the mistake shall be the legitimate issue of both parties.

Section 4. Section 30-1-6 is amended to read:

**30-1-6. Who may solemnize marriages -- Certificate.**

(1) Except for a county clerk, or a county clerk's designee, as provided below, the following ~~[persons]~~ individuals may solemnize a marriage at that ~~[person's]~~ individual's discretion:

~~[(a) ministers, rabbis, or priests of any religious denomination who are:]~~

~~[(i) in regular communion with any religious society; and]~~

~~[(ii) 18 years of age or older;]~~

(a) an individual 18 years old or older who is authorized by a religious denomination to solemnize a marriage;

(b) Native American spiritual advisors;

- 86 (c) the governor;  
87 (d) the lieutenant governor;  
88 (e) mayors of municipalities or county executives;  
89 (f) a justice, judge, or commissioner of a court of record;  
90 (g) a judge of a court not of record of the state;  
91 (h) judges or magistrates of the United States;  
92 (i) the county clerk of any county in the state or the county clerk's designee as  
93 authorized by Section 17-20-4;  
94 (j) the president of the Senate;  
95 (k) the speaker of the House of Representatives; or  
96 (l) a judge or magistrate who holds office in Utah when retired, under rules set by the  
97 Supreme Court.
- 98 (2) ~~[A person]~~ An individual authorized under Subsection (1) who solemnizes a  
99 marriage shall give to the couple married a certificate of marriage that shows the:
- 100 (a) name of the county from which the license is issued; and  
101 (b) date of the license's issuance.
- 102 (3) As used in this section:
- 103 (a) "Judge or magistrate of the United States" means:  
104 (i) a justice of the United States Supreme Court;  
105 (ii) a judge of a court of appeals;  
106 (iii) a judge of a district court;  
107 (iv) a judge of any court created by an act of Congress the judges of which are entitled  
108 to hold office during good behavior;  
109 (v) a judge of a bankruptcy court;  
110 (vi) a judge of a tax court; or  
111 (vii) a United States magistrate.
- 112 (b) (i) "Native American spiritual advisor" means a person who:  
113 (A) leads, instructs, or facilitates a Native American religious ceremony or service or

provides religious counseling; and

(B) is recognized as a spiritual advisor by a federally recognized Native American tribe.

(ii) "Native American spiritual advisor" includes a sweat lodge leader, medicine person, traditional religious practitioner, or holy man or woman.

(4) Except as provided in Section 17-20-4, and notwithstanding any other provision in law, no ~~[person]~~ individual authorized under Subsection (1) to solemnize a marriage may delegate or deputize another ~~[person]~~ individual to perform the function of solemnizing a marriage.

Section 5. Section 30-1-8 is amended to read:

**30-1-8. Application for license -- Contents.**

(1) A county clerk may issue a marriage license ~~[may be issued by the county clerk to a man and a woman]~~ only after an application has been filed in ~~[his]~~ the county clerk's office, requiring the following information:

(a) the full names of the ~~[man and the woman]~~ applicants, including the maiden or bachelor name ~~[of the woman]~~ of each applicant;

(b) the ~~[Social Security]~~ social security numbers of the ~~[parties, unless the party]~~ applicants, unless an applicant has not been assigned a number;

(c) the current address of each ~~[party]~~ applicant;

(d) the date and place of birth ~~[f]town or city, county, state or country, if possible[.];~~

(e) the names of ~~[their]~~ the applicants' respective parents, including the maiden name of the mother; and

(f) the birthplaces of ~~[fathers and mothers (]~~ the applicants' respective parents, including the town or city, county, state or country, if possible~~); and]~~.

~~[(g) the distinctive race or nationality of each of the parents.]~~

~~[(2) If the woman is a widow, her maiden name shall be shown in brackets.]~~

~~[(3)]~~ (2) If one or both of the ~~[parties]~~ applicants is under 16 years of age, the clerk shall provide them with a standard petition on a form approved by the Judicial Council to be

presented to the juvenile court to obtain the authorization required by Section 30-1-9.

(3) (a) The ~~[Social Security]~~ social security numbers obtained under the authority of this section may not be recorded on the marriage license, and are not open to inspection as a part of the vital statistics files.

(b) The Department of Health, Bureau of Vital Records and Health Statistics shall, upon request, supply those ~~[Social Security]~~ social security numbers to the Office of Recovery Services within the Department of Human Services.

(c) The Office of Recovery Services may not use any ~~[Social Security]~~ social security numbers obtained under the authority of this section for any reason other than the administration of child support services.

Section 6. Section 30-1-9 is amended to read:

**30-1-9. Marriage by minors -- Consent of parent or guardian -- Juvenile court authorization.**

(1) For purposes of this section, "minor" means ~~[a male or female]~~ an applicant for a marriage license under 18 years of age.

(2) (a) If at the time of applying for a license the applicant is a minor, and not before the minor is married, a license may not be issued without the signed consent of the minor's ~~[father, mother,]~~ parent or guardian given in person to the clerk~~[-however]~~, except that:

(i) if the parents of the minor are divorced, consent shall be given by the parent having legal custody of the minor as evidenced by an oath of affirmation to the clerk;

(ii) if the parents of the minor are divorced and have been awarded joint custody of the minor, consent shall be given by the parent having physical custody of the minor the majority of the time as evidenced by an oath of affirmation to the clerk; or

(iii) if the minor is not in the custody of a parent, the legal guardian shall provide the consent and provide proof of guardianship by court order as well as an oath of affirmation.

(b) If the ~~[male or female]~~ applicant is 15 years of age, the minor and the parent or guardian of the minor shall obtain a written authorization to marry from:

(i) a judge of the court exercising juvenile jurisdiction in the county where either party

to the marriage resides; or

(ii) a court commissioner as permitted by rule of the Judicial Council.

(3) (a) Before issuing written authorization for a minor to marry, the judge or court commissioner shall determine:

(i) that the minor is entering into the marriage voluntarily; and

(ii) the marriage is in the best interests of the minor under the circumstances.

(b) The judge or court commissioner shall require that both parties to the marriage complete premarital counseling. This requirement may be waived if premarital counseling is not reasonably available.

(c) The judge or court commissioner may require:

(i) that the [person] minor continue to attend school, unless excused under Section 53G-6-204; and

(ii) any other conditions that the court deems reasonable under the circumstances.

(4) The determination required in Subsection (3) shall be made on the record. Any inquiry conducted by the judge or commissioner may be conducted in chambers.

Section 7. Section **30-1-10** is amended to read:

**30-1-10. Affidavit before the clerk -- Penalty.**

(1) [~~When the parties are personally unknown to the clerk a license may not be issued~~] A clerk may not issue a license until an affidavit is made before the clerk, which shall be filed and preserved by the clerk, by a party applying for the license, showing that there is no lawful reason in the way of the marriage.

(2) A party who makes an affidavit described in Subsection (1) or a subscribing witness to the affidavit who falsely swears in the affidavit is guilty of perjury.

Section 8. Section **30-1-12** is amended to read:

**30-1-12. Clerk to file license and certificate.**

(1) The license, together with the certificate of the [person] individual officiating at the marriage, shall be filed and preserved by the clerk, and shall be recorded by [him] the clerk in a book kept for that purpose, or by electronic means. The record shall be properly indexed in the

198 names of the parties so married.

199           (2) A transcript shall be promptly certified and transmitted by the clerk to the state

200 registrar of vital statistics.